

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

ARLYN P. ILDEFONSO,

Petitioner,

v.

BRIAN GAGE, Warden,

Respondent.

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4:13CV3110

**MEMORANDUM
AND ORDER**

This matter is before the Court on Petitioner's Motion for Evidentiary Hearing and Appointment of Counsel (Filing No. 51). Rule 8(a) of the *Rules Governing Section 2254 Cases in the United States District Courts* states in pertinent part: "If the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted." When deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable the habeas petitioner to prove the petition's factual allegations, which, if true, would entitle the petitioner to federal habeas relief on his claims. *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007). An evidentiary hearing may be held when the habeas petition "alleges sufficient grounds for release, relevant facts are in dispute, and the state courts did not hold a full and fair evidentiary hearing." *Sawyer v. Hofbauer*, 299 F.3d 605, 610 (6th Cir. 2002) (internal quotation omitted).

Here, the Court has not yet reviewed the Amended Petition for Writ of Habeas Corpus, Respondent's Amended Answer, or the State Court Records. Without reviewing these materials, the Court is unable to determine whether an evidentiary hearing on Petitioner's claims is necessary. Accordingly, the Court will deny Petitioner's Motion

without prejudice. The Court will reconsider Petitioner's Motion if, following review of the record in this matter, the Court determines that an evidentiary hearing is necessary. The Court will appoint counsel to represent Petitioner if it determines that an evidentiary hearing is warranted. See Rule 8(c) of the *Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an evidentiary hearing is warranted). Accordingly,

IT IS ORDERED: Petitioner's Motion for Evidentiary Hearing and Appointment of Counsel (Filing No. 51) is denied without prejudice to reassertion.

DATED this 1st day of December, 2014.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge